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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 359

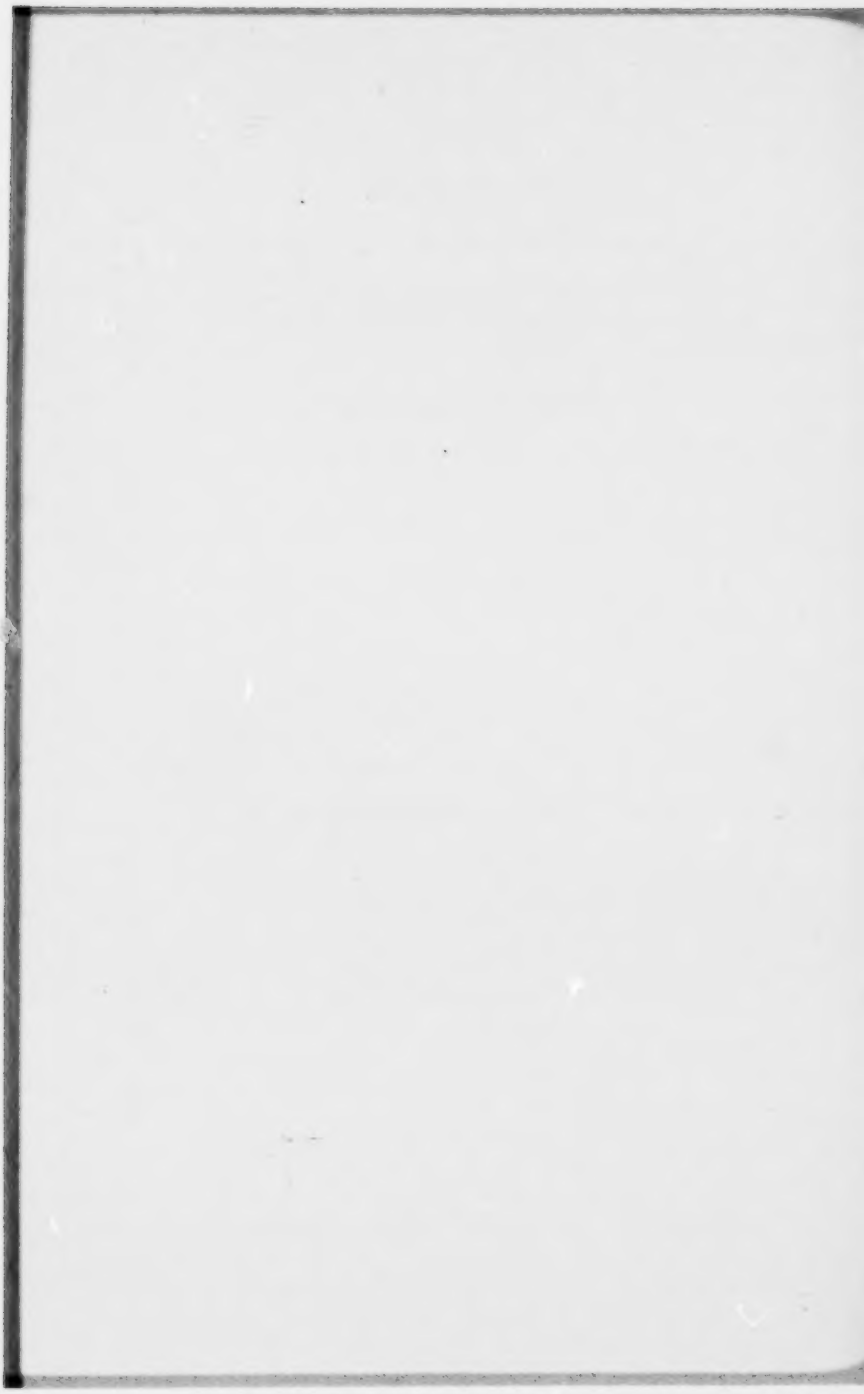
STOCKHOLDERS' COMMITTEE OF THE UNIVERSAL LUBRICATING SYSTEMS, INC.,
Petitioner,

vs.

AUSTIN L. STALEY, TRUSTEE IN REORGANIZATION FOR THE UNIVERSAL LUBRICATING SYSTEMS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

S. WALLACE DEMPSEY,
W. C. MCCLURE,
Counsel for Petitioner.



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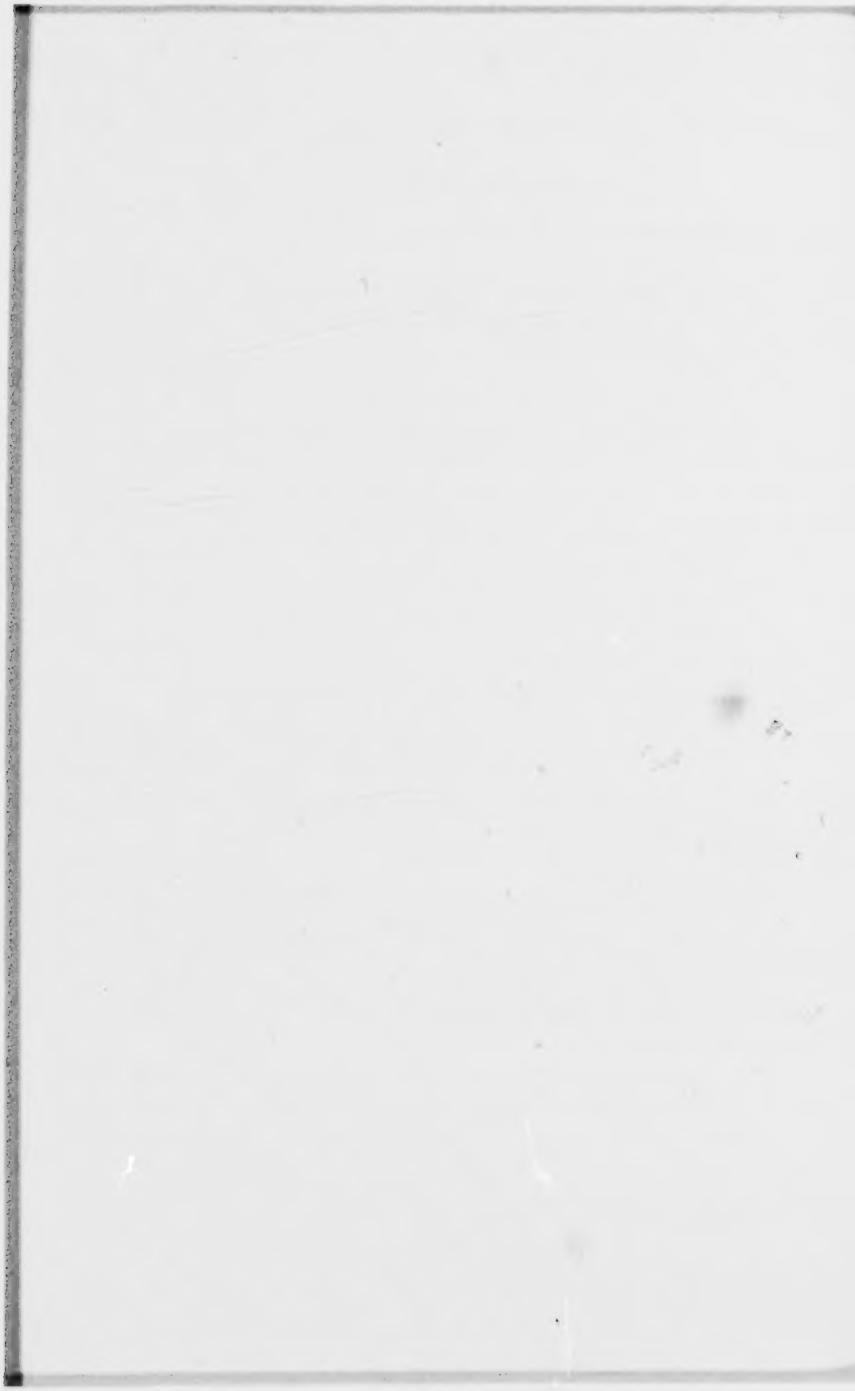

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STOCKHOLDERS' COMMITTEE OF THE UNIVERSAL LUBRICATING SYSTEMS, INC.,

Petitioner,

vs.

AUSTIN L. STALEY, TRUSTEE IN REORGANIZATION FOR THE UNIVERSAL LUBRICATING SYSTEMS, INC.

PETITION OF STOCKHOLDERS' COMMITTEE OF THE ABOVE-NAMED DEBTOR

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the United States Supreme Court:

This is an application by a Stockholders' Committee of the above named Debtor for a writ of certiorari for a review of the decree of the United States Circuit Court of Appeals for the Third Circuit affirming a decree of the United States District Court for the Western District of Pennsylvania, approving a plan for the reorganization of the above named corporation.

Jurisdiction

The Petitioners respectfully show that jurisdiction arises herein under the Statute set out as Section 347 of Title 28, U. S. C.

A. Summary Statement of the Matters Involved

Debtor (hereinafter called Universal), was formed to manufacture lubricating appliances invented by Gerald S. Rogers, only to find continuous, persistent opposition to the marketing of its products by Stewart-Warner Corporation, which had long enjoyed a monopoly of such appliances. From 1932 to 1941, Stewart-Warner brought many patent suits against Universal Lubricating Systems, Inc., charging enfringements by it, and all of these suits (excepting the present pending litigation), have been determined favorably to Universal (App. pp. 92a, 93a), the losses of Universal from which amount to $2,000,000.00 (App., pp. 125a, 130a). Stewart-Warner has made profits through its unfair competition sought to be recovered in the pending action, in addition to the losses (Id. 126a). After Universal suffered these huge losses (through Stewart-Warner's unfair competition), in May, 1936, it obtained loans from one Brynoldt on an Agreement that, if his loans exceeded $20,000.00, all Debtor's machinery, materials and manufactured stock should become Brynoldt's property. In 1937, his indebtedness exceeded $20,000, whereupon he claimed absolute title to all Debtor's machinery, materials and manufactured stock, and exacted a Bill of Sale, and attempted to secure possession and to exercise all rights of ownership, including leasing its own property to the Universal for three (3) years and eleven (11) months at a rental of $23,500, payable $500 per month, plus 6% interest (Plan p. 49).

The property claimed consists of 148 items (Plan p. 55), and is practically the same as that which the Master found to be worth $327,000.

Brynoldt acquired, in addition, title to patents owned by Debtor, the coupler patent alone being worth $40,000, and he acquired 75 shares of preferred and 3800 shares of common stock,—all, so far as appears for the $23,500 (Id.). Brynoldt and his attorney, with a third person, filed the Petition in Bankruptcy herein. The Trustee believes there is but remote possibility that Brynoldt could sustain his claim of absolute ownership (July M. R. Para. 25).

The issue litigated herein is whether the Debtor is solvent and its stockholders entitled to rights in the reorganized company. The evidence on this issue was as follows:

(1) No creditor appeared at the hearings before the Master or the District Judge (except Brynoldt), but the contentions of the creditors were presented and urged by the Trustee and his attorney.

(2) Universal's tangible assets, excepting its claims against Stewart-Warner and Brynoldt, and excepting a valuable patent, were appraised on behalf of the Trustee for the creditors, and also separately on behalf of the Stockholders' Committee, with the result that,—

The Committee's valuation was . . . $375,078.58; and the Trustee's valuation for the Creditors was . . . $279,719.20.

The Master did not find that the Trustee's valuation was more dependable than that made for the Committee, but gave the Trustee's valuation the benefit of three-fourths (¾) of the difference between the two valuations, and found the value of this part of the tangible property not to exceed . . . . . $300,000.

(July Master's Report, hereinafter called July M. R., Para. 6, p. 25a, 26a).

From July To October, 1944, Debtor's physical assets increased in value ..... $27,000. (October Master's Report, hereinafter called Oct. M. R., p. 60a, 61a).

(3) *The Master, the District Judge and the Circuit Court of Appeals refused to find that the Stewart-Warner claim had a value, proof as to which claim was as follows:*

Certain proof as to the Stewart-Warner claim is stated above. In addition, Universal's attorney in the pending action, seeking to recover the estimated damages, states that he believes them to be $2,000,000 (125a, 126a, 130a), and that he is entirely satisfied that he can prove liability "up to the hilt" (127a).

It is stated in the Plan that,— * * * "that litigation, (with Stewart-Warner), extended over a number of years, has occasioned the expenditure of a great amount of money for incidental expenses and counsel fees, and losses of various kinds, but recent decisions on the primary questions involved in that litigation, have been favorable to Debtor, and there is every reason to expect that there will be a substantial recovery by the Debtor's Trustee in the final stages of that litigation" (Plan top p. 4).

The District Court has authorized the Trustee to expend the money necessary to continue this litigation (July M. R. Para. 20, p. 32a; Oct. M. R. Para. IV, p. 72a).

The District Judge and the Circuit Court of Appeals both recognize the probability of recovery by Debtor in this action, the District Judge by providing that the proceeds should be distributed to creditors to the full amount of the claims and the balance to Debtor's present stockholders, which was affirmed by the Circuit Court of Appeals (132a, 133a, —).

(4) *The Master refused also to value Debtor's claim against Brynoldt*, the proof as to which is stated above, for

damages growing out of Brynoldt's claiming absolute title to its property, with no foundation for such claim, and thereby destroying such credit as Universal had after its long controversy with Stewart-Warner.

(5) *The Master refused to value a coupler patent,* the proof as to which was that, the goods manufactured under the patent would vary in value between $100,000 and $300,000 per year (Oct. M. R. Para. 4, p. 62a), making an average of $200,000 production on which at 3% would be $60,000 a year and for the twelve (12) years the patent runs would amount to $72,000, with a present value of $40,000 (Id. Para. 8, p. 64a). Brynoldt's entire claim was for $23,500 (Plan p. 49 to 54 inc.), and title to the patent was taken by him for the same consideration as that for the Bill of Sale which he exacted for Debtor's other property.

(6) *The Master refused to value Universal on earnings, the proof as to which was as follows:*

(a) Debtor's Prospects

The Master reported as follows,

> "there is a probability that in the future there will be a great and increasing need of lubricating devices such as are manufactured by debtor, and for similar equipment." (July M. R. Para. 13, p. 29a.)

Universal's profits in the future should be five and a half times as great as they have been in the past, owing to the fact that new machinery (which has been partly and will be wholly acquired), is that much more efficient. (Id., Para. 14, p. 30a; Oct. M. R., Para. 6, p. 63a.)

> "* * * the Trustee thinks that by buying one machine at a time and selling some of the old ones, a modern plant would be built up which would have a small but profitable production and be able to compete

with any competitor at any price." (July M. R., Para. 15, p. 30a.)

"The industrial business has recently been profitable, * * *," (Id., Para. 11, p. 28a).

"The evidence shows grounds for expecting success for the reorganized company if it has adequate working capital," (Id., Para. V, p. 50a).

"The prospects for the entire line of fittings including this coupler are a great deal brighter than they were at the time of the previous hearing," (Oct. M. R., Para. 4, p. 62a).

"In the Trustee's opinion, if there is a prompt reorganization and building up of the key personnel, the company will have profitable operations to such extent as to be able to maintain dividends on the preferred stock and possibly to pay it off over a period of years," (Id., Para. 7, pp. 63a, 64a).

Mr. B. F. Hunter, the Chief Lubrication Engineer of the Gulf Oil Corporation, testified that it is his opinion that the products manufactured by Universal will not only be greatly needed in the future, but will increase, largely in use and demand.

(b) The operation of the business by the Trustee has resulted as follows:

May to December 1941—Profit	$17,613.55
For year of 1942—loss	$55,930.47
For year of 1943—profit	$151,008.42
January 1 to May 31, 1944—profit	$83,934.22
(Id., Para. 8, p. 27a.)	
The profits for the full year of 1944 were	$124,046.56
Universal's net profits from May, 1941 to September, 1944, three and a third years, were	$196,625.72

At the rate per year of $60,000 (Oct. M. R. Discussion Para. 1, p. 68a).

(c) *Increased earnings will arise from modern, efficient equipment, which has been acquired recently to replace part of the obsolete and inefficient machines.*

"With one man's labor, 1,000 units per hour can be produced from one Davenport Automatic Screw machine, as compared with 180 per hour from one old machine," the new machine being five and a half times as efficient as the old one (Appendix, July M. R., Para. 14, p. 30a).

Universal acquired three of the new type machines previous to last October and 40% of the machinery is efficient (Oct. M. R. Para. 6, p. 63a).

Universal's property has rapidly increased in value.

"Universal's tangible assets—May 26, 1941, amounted on liquidation value to $39,192.35 and on going concern value to $76,470.59.

Universal at present—has a paid in invested capital for Federal Tax purposes of approximately $329,000.00 (Amended Plan p. 5). This large increase in assets has been without any substantial increase in liability (Schedule of Debts in Petition for Order declaring Universal a Bankrupt), showing assets of $63,909.16; showing debts of $331,661.18.

(d) Debtor's Cash Position

This position was as follows on the following dates, viz:

May 31, 1944	$118,478.21
Aug. 31, 1944	137,976.23
(Oct. M. R., Para. 10, p. 66a) (Trustee's Report)	
Dec. 31, 1944	201,330.67
December Inventory	59,133.85
Total current assets	260,464.52

The July Report (Para. 38), showed cash requirements of the Plan $58,803.53.

This consists of the following payments:

To Brynoldt	$35,000.00
Clark & Doolittle Judgment	5,803.53
On Federal Taxes	10,000.00
Pennsylvania Taxes, disputed	8,000.00
(July M. R., Para. 44a)	$58,603.53
Deducting from	$201,330.67
the above	58,603.53
Leaves	$142,727.14
Deducting from	$260,464.52
the above	58,603.53
Leaves	$201,860.99

The Total Federal Tax is $27,351.33, the balance of which after payment of $10,000., is $17,351.33, and is to be paid in 12 equal monthly payments, commencing the first month after consummation of the Plan (July M. R., Para. 38, pp. 90, 91).

The Debtor needs as cash capital, only $75,000.00, and has current assets, as shown above, of $201,860.99, if we omit as we should the $35,000 for Brynoldt, the current assets are $236,860.99.

(e) "*Solvency as Estimated by Master.*"

Claims not disputed by Trustee amount to	$397,927.61
Physical property (not including Stewart-Warner claim or patents)	327,000.00
Excess of debts over value of physical assets	$70,927.61

"Solvency as Correctly Estimated on part of Tangible Assets Only."

(Para. II, p. 69a) Physical Property valued at	$327,000.00
(July M. R., Para. 5) Patents	40,000.00

Mistaken calculation of value of tangible assets thru allowing ¾th of the difference, (instead of ½), between the two equally reliable appraisals, to the Trustee and creditors	$23,839.84
Total	$390,839.84
Claims not disputed by Trustee	$397,927.61
Excess of liabilities over tangible assets (not including claims against Stewart-Warner and Brynoldt)	$7,087.77
There is included in the Master's claims, the Brynoldt invalid rental claim (which should be deducted), of	$29,316.00
This leaves an excess of assets (not including claims), over liabilities, of	$22,228.23

The conclusions and decisions by the Master, District Judge and the Circuit Court of Appeals were as follows:

The Master found that Universal is insolvent and approved the Plan, whereby the only possible benefit to be derived by the present stockholders is the right of the present preferred stockholders to purchase at $10.00 per share one share of common stock of the reorganized company for each share of their present preferred stock, and the right of the common stockholders to purchase at $10.00 per share one share of common stock of the reorganized company for ten (10) shares of their present common capital stock (Plan 20, 21).

The present company has outstanding 35,000 shares of common stock of the par value of $1.00 per share, and 2150 shares of preferred stock of the par value of $100. per share (Id., p. 5).

The reorganized company would have 4,000 shares of preferred stock of no par value and 15,000 shares of common stock of no par value (Id., p. 11).

Aside from these rights of the present stockholders, the stock of the new company would be distributed as follows: unsecured general creditors would receive one share of preferred stock for each $100 of their claims, plus one share of common stock (Id., p. 20); the remaining shares may be sold by the reorganized company (Id., p. 12).

The present company has two and a half times as many shares as the reorganized company, and as the present stock is worth $1.00, the new stock would be worth $2.50, except for the fact that there are only 2,150 preferred shares in the present company and there would be 4,000 in the new company, and the new stock is to be redeemed at $100. per share (Plan, p. 12). So, the liens ahead of the common stock in the new company will be approximately twice those now existing, and the right to purchase, at $10.00, common stock worth no more really than the present $1.00 common stock, has no possible value.

The secured claim of Clark & Doolittle is to be paid (Id. p. 19).

Brynoldt is to receive $35,000 for satisfactions of his mortgages and judgments and withdrawal of his Reclamation Petition, his rights in escrow funds, or for royalties as to the coupler or other patent, and an assignment to the reorganized company of any interest in the machinery in Debtor's plant or in the patents, and for the difference between the face of his claim and $35,000.00 (M.R. 23 a), he is to receive the same treatment as other unsecured creditors, subject to the condition that Brynoldt allow three (3) claims, *viz*, a judgment for $2,960.69 recovered by W. S. Haggott (M. R. 22a), and two mortgages, one for $5,580.54 and the other for $2,260.50 (M. R. 23a, 24a), to remain unpaid not more than a year after consummation of the Plan.

The reorganized company is to have seven (7) Directors, including Austin L. Staley, the present Trustee (whose

brother is the husband of a daughter of Brynoldt), Christian Brynoldt, and Henry Bergstrom, his attorney (Plan p. 14).

There is only a remote possibility that Brynoldt could sustain his claim of absolute ownership of the Debtor's property, the Trustee asserts (M. R. bot. p. 34a).

The Master specifically allowed $29,316, the amount Brynoldt claimed for rental by Debtor for its own property (Bot. M. R. 22a).

The Master also allowed Brynoldt his alleged loans from April 27, 1936, to April 11, 1938, $13,568.25 (Id. 21a, 22a), but his Reclamation Petition was filed November 24 1937, and stated that Debtor's entire indebtedness to him exceeded $20,000 (Plan p. 50), thus covering the period from April 27, 1936, to November 24, 1937, a year and seven months of the two years for which the $13,568.25 was claimed.

The original Plan provided that the present preferred stockholders should receive one share of common stock in the reorganized company for each share of their present stock and the holders of the present common stock should receive common stock in the reorganized company at the rate of one share of new stock for ten shares of the present stock (pp. 18, 19). As stated hereinabove, on account of the increase from the 3,500 common shares to 15,000 in the reorganized company, and of the increase of preferred stock from 2,150 to 4,000, this provision for the present stockholders had at most only a nominal value, yet the Master, of his own motion and without objection on the part of any creditor, held that the Plan was not fair or equitable because of this nominal provision for present stockholders (App. 57a).

The District Judge affirmed the October report of the Master with the following exception, *viz*,—he directed that the proceeds of the Stewart-Warner litigation be paid

to the reorganized company to the amount needed to retire its preferred stock—the balance, if any, to be distributed among Debtor's preferred and common shareholders (App. 132a, 133a).

B. Reasons Relied On for the Allowance of the Writ

Your Petitioner contends that the writ should be granted for the following reasons:

1. The refusal to value the Debtor Corporation on earnings is in conflict with the applicable decisions of this Court.

2. The refusal to value the Brynoldt claim is in conflict with the applicable decisions of this Court.

3. The refusal to value the coupler patent is in conflict with the applicable decisions of this Court.

4. The allowance of Brynoldt's claim of $29,316 for rental by Universal so far departs from the accepted and usual course of judicial procedure as to call for an exercise of this Court's power of supervision.

5. The refusal to permit the Debtor to seek recovery of the damages suffered by it through Brynoldt's unfounded claim of title and consequent injury to its credit so far departs from the accepted and usual course of judicial procedure as to call for an exercise of this Court's power of supervision.

6. The refusal to value the Stewart-Warner claim is in conflict with the applicable decisions of this Court.

7. The provision of the Plan whereby the Debtor's creditors are to be paid in full from the profits of the Stewart-Warner litigation and are, in addition to payment in full, to be presented as a gift with all Debtor's property (other than the balance of the proceeds of the Stewart-

Warner litigation remaining after payment of the creditors in full), worth at least $327,000, aside from the Stewart-Warner and Brynoldt's claims, and the coupler patent, so far departs from the accepted and usual course of judicial procedure as to call for an exercise of this Court's power of supervision.

8. The Master's holdings that three-fourths of the difference between two equally reliable appraisals of tangible assets should be given to the Trustee and the creditors, his refusal to value the Stewart-Warner and the Brynoldt claims, and to allow suit to enforce Universal's claim against Brynoldt, his striking out of his own motion and without objection by any creditor of the merely nominal provision for the present stockholders contained in the original Plan, the approval of Brynoldt, his attorney and the brother of his son-in-law as three of the Directors of the reorganized company and the provision for payment to Brynoldt of $35,000 cash, this payment to Brynoldt being the only cash payment to an unsecured creditor, and the approval of all these rulings made by the Master's two reports, by the District Judge and by the Court below constitutes in the aggregate a disposition of this proceeding which so far departs from the accepted and usual procedure as to call for an exercise of this Court's power of supervision.

9. The provisions in the plan for the selection of Brynoldt, his attorney, and Staley, the brother of his son-in-law, as Directors of the reorganized company, is not an equitable one and is incompatible with the interests of the present stockholders of Universal, and especially with the preservation of their rights in the claim of Universal against the Stewart-Warner Corporation, and such a provision is in conflict with Title 11, Section 616 of the U. S. Code.

10. The plan is neither fair nor equitable in that—

(a) It fails to provide for determining the question of solvency by valuing Universal on earnings;

(b) It fails to value the Stewart-Warner claim, the Brynoldt claim and the coupler patent;

(c) It allows the invalid Brynoldt rental claim of $29,316.00;

(d) It provides, in the eventuality described in the plan, for the payment to the creditors in full and for presenting them as a gift, the Universal's property (other than the proceeds of the Stewart-Warner claim), worth approximately $400,000; and

(e) It provides for making Brynoldt, his attorney, and the Trustee, the brother of his son-in-law, directors, and prefers Brynoldt's invalid claim for a large payment, that being the only cash payment to an unsecured creditor.

11. It is urged that there should be a reversal of the decree below in the public interest: that the enforcement of the anti-monopoly statutes is of vital importance and it would be greatly hindered if it were established, as the decree below would, that if a citizen thru long, vigorous and single-handed effort breaks a monopoly, but in doing it becomes unable to pay his debts at once, but has his business and his claim against the monopolist for damages inflicted, all that he has, except what remains of these damages after paying the creditors in full, will be taken from him and given as a present to his creditors in addition to their being paid in full.

The writ should be granted, therefore, because there is involved this public and general and highly important interest, and failure of the Court below to recognize and give appropriate weight to the great public interest involved, so far departs from the accepted and usual course of judi-

cial procedure as to call for an exercise of this Court's power of supervision.

All of which is respectfully submitted.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari be issued under the Seal of this Honorable Court, directed to the Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings of the case, numbered and entitled on its docket, No. 8902, in the Matter of Universal Lubricating Systems, Inc., in Proceedings for Reorganization of a corporation under Chapter X of the Bankruptcy Act, and that said judgment of the said U. S. Circuit Court of Appeals for the Third Circuit may be reviewed by this Honorable Court, and that your Petitioner may have such other and further relief in the premises as this Court may deem proper.

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Dated: August 22, 1945.